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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 365

SEAS SHIPPING COMPANY, INC.,
Petitioner,

vs.

JOSEPH SIERACKI,
Respondent

BRIEF ON BEHALF OF RESPONDENT ON WRIT OF CERTIORARI

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The Statement of the Case

The respondent, Joseph Sieracki, a longshoreman, brought this action to recover damages for personal injuries sustained on board petitioner's vessel. The latter thereafter impleaded the Bethlehem Companies, and at the trial of the cause, the parties agreed on the amount of damages and submitted the question of liability to the District Judge, waiving the right to a jury trial. The undisputed facts as found by the Trial Judge are as follows (R. 123):

The Steamship "Robin Sherwood" was built by the Bethlehem Companies pursuant to a contract with the United States Maritime Commission. Shortly before the

completion of the vessel, it was assigned to the petitioner, Seas Shipping Company. After taking delivery, petitioner had operated the "Robin Sherwood" for some eighteen months when the vessel entered the port of Philadelphia on December 23rd, 1942 for the purpose of loading a cargo of freight cars, among other things. The job of loading the cargo was delegated to the B. H. Sobelman Company, a stevedoring concern, the employer of respondent. The vessel was equipped with a ten ton boom which had never been used since the delivery of the vessel. This boom was selected to load the cargo on the occasion in question. The longshoremen lowered one piece of a freight car into the hold of the vessel and were engaged in stowing away the second part, the weight of which was not in excess of 8.2 tons when the shackle, which supported the ten ton boom broke, causing the boom and tackle to fall, thereby injuring respondent.

The Trial Judge found that the accident was due to an internal flaw in the shackle and held the Bethlehem Companies liable upon the ground that the defect could have been disclosed by a reasonable inspection in the shipyard. The Trial Judge held further that the petitioner, the shipowner, was not negligent inasmuch as it could not have discovered the defect by a mere visual inspection. The District Judge also found as a fact that the vessel was unseaworthy because of the defective shackle, but held further, that, there being no warranty of seaworthiness so far as respondent was concerned, petitioner could not be held liable on any ground. The Bethlehem Companies appealed from the judgment against them and respondent then appealed from the judgment against him. The Court of Appeals affirmed the judgment against the Bethlehem Companies and reversed the judgment of the District Court on respondent's appeal, holding that there was a warranty of seaworthiness which imposed liability on petitioner. The Seas

Shipping Company thereupon filed its petition for a writ of certiorari which was granted by this Court, and this argument is upon the issues raised in that petition.

Counter-Statement of the Questions Involved

The basic question involved may be simply stated:

Is a shipowner liable to a stevedore for personal injuries caused by an unseaworthy condition of the vessel?

Petitioner also questions the authority of the Court to apply an admiralty doctrine since the suit was commenced on the civil side of the Court. The second question raised by the petition, therefore, is:

May a substantive right, arising under the general maritime law be invoked in an action on the civil side of the Court?

ARGUMENT

Summary of Argument

First. Where a stevedore is injured while engaged in loading operations aboard ship, his claim for indemnity is governed by the same rules which are applicable to seamen generally.

Second. The warranty of seaworthiness, which is the basis of the claim for indemnity, covers all seamen, which term includes not only the members of the crew, but also the stevedores who perform the same services formerly performed by the members of the crew. These services being of direct benefit and necessity to the vessel and her owner.

Third. The warranty of seaworthiness is a substantive and not a procedural right, and it is, therefore, applicable in any Court where the suit may be brought and whether it be on the civil or admiralty side of the Court.

Longshoremen as Seamen under the Maritime Law

In the early days of merchant shipping, the members of the crew attended to all of the services incidental to the management and operation of the vessel in the transportation of passengers and cargo. With advancing times, that part of the crew's services which had to do with the loading and discharging of cargo was gradually taken over by a class of men who became most efficient in the handling of cargo. In the meantime, an intermediary sprang up in the form of a contractor who arranged to provide the men for the loading and discharging operations of the vessels. Although these contractors employ and pay the stevedores, in actual effect they are merely procurers of laborers who become seamen during the period they are discharging those duties which are a part of the seamen's job.

Because the work in which these stevedores are engaged is maritime in character and has direct bearing to the vessel engaged in navigation, no state law can be applicable to govern the rights of these men for personal injuries. *State of Wash. etc.* v. *Dawson*, 264 U. S. 219, 68 L. Ed. 646. Their status and their rights have been held to be governed from the earliest times by the maritime law, and for many purposes they have been specifically characterized as seamen under the maritime law with all the rights implied in the use of that term. In *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 58 L. Ed. 1208, the Court identified this group of men as follows:

> "The libellant was injured on a ship, lying in navigable waters, and while he was engaged in the performance of a maritime service. We entertain no doubt that the service in loading and stowing a ship's cargo is of this character. Upon its proper performance depend in large measure the safe carrying of the cargo and the safety of the ship itself; and it is a serv-

> ice absolutely necessary to enable the ship to discharge its maritime duty. Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class '*as clearly identified with maritime affairs as are the mariners*'." (Italics ours.)

There are a number of rights which are vested in members of the crew, but which, by their very nature, cannot be extended to stevedores. A member of the crew who falls ill or is injured in the service of the ship is entitled to wages to the end of his shipping articles and to maintenance and cure so long as his condition requires it, and this is so irrespective of any fault or culpability on the part of the vessel or its owner. *Calmar Steamship Corp.* v. *Taylor*, 303 U. S. 525, 82 L. Ed. 993. These two rights arise out of the seamen's relationship to the vessel, and they contemplate the hazards arising out of the ship's voyage as well as the services performed in connection with the operation of the vessel. The stevedore's employment does not contemplate participation in the actual voyage itself and he is not required to sign shipping articles as are the members of the crew. He thus has no claim for wages based on contract if his employment should suddenly terminate because of illness or injury. Moreover, if he should suddenly be stricken ill or become injured in the course of his employment, he cannot recover the cost of his maintenance and cure, as would have been the case if he had been a member of the crew. The same considerations which preclude a recovery of maintenance and cure and wages to the end of the voyage in connection with a stevedore's injuries do not apply with respect to the claim for indemnity.

Aside of the rights of maintenance and cure and wages to the end of the voyage, the Courts have held since the earliest times that for most other purposes, stevedores

must be considered as seamen with the same privileges and immunities applicable to members of the crew. This proposition is illustrated in the very early case of *the Canada*, 7 Fed. 119 (1881) where a stevedore who had unloaded a vessel, claimed the benefit of a lien against the vessel for wages in the same manner as was accorded to the members of the crew. In holding that the stevedores were entitled to such a lien, the Court, after reviewing the authorities, quoted with approval an excerpt by the learned Judge Benedict from *the Circassion* (1 Ben. 209), which is peculiarly appropriate at this point as follows:

> "The same view was taken of the matter, on principle, by Judge Benedict, in The Circassian, 1 Ben. 209. He says: '*I confess that I have never been able to see any sound distinction between the nature of the services performed in stowing and breaking out the cargo of a ship and its services performed in its transportation.* The stowage and the landing of the cargo form a necessary part of the contract of affreightment. Without the performance of this duty no freight can be earned. The safety of the ship and cargo depends, in a great measure, upon the care and skill displayed in the performance of this duty, and for its non performance in a proper manner the ship is liable in the admiralty. It is a service which, when performed by the crew, as is frequently the case, is considered a maritime service, and compensated in the admiralty under the name of wages. *And, when not performed by the crew, it devolves upon a class as clearly identified with maritime affairs as are the mariners, and fitted for their duty by a special and peculiar experience.*'" (Italics ours.)

A similar view ws adopted in connection with the stevedores' rights for personal injuries in *Gerrity* v. *Bark Kate Cann*, 2 Fed. 241. In that case, a stevedore was injured because of inadequate bracings. In defining the

status of the stevedore, Judge Benedict made the following pertinent observation:

> "In regard to the presence of the libellant in the between-decks, the evidence shows that he was not there by the mere sufferance or license of the shipowner, but for the purpose of performing a service that could not be performed elsewhere, and *in which the shipowner had an interest.* To be sure, the libellant was not directly employed by the shipowner, and it may be truly said that no relation by contract existed between the shipowner and the libellant. But the libellant was trimming the shipowner's ship. He was doing what was necessary to be done to enable the ship to carry the cargo in safety, and the reason why he was so employed was because the shipowner had, by a contract with the charterer, indirectly provided for the performance of this service.
>
> "*There was a relation between the shipowner and the libellant arising, not out of the mere presence of the libellant on board the ship, but out of the service he was then engaged in performing, the necessity of that service to the shipowner, and the circumstances of the libellant's employment to perform that service.*" (Italics ours.)

It is thus apparent that although there is no direct contract relationship between the shipowner and the stevedore, there is nevertheless a relationship between them which arises out of the service which the stevedore performed for the benefit of the vessel. It was because of this relationship that Judge Benedict, in that case, held the stevedore entitled to a lien, against the vessel itself, in connection with his claim for personal injuries. On this point, Judge Benedict continued:

> "For these reasons I conclude that the damages sued for arose from the neglect of a duty owing by the shipowner to the libellant. This neglect was the neglect of a maritime duty, and attaches to the ship herself. Not

only did the neglect occur upon navigable water, but in the performance of a service necessary to be performed to enable the ship to receive her cargo. The stowing of this dunnage was part of the ordinary duty of the ship's crew, and in this case was done by the crew. The object of stowing the dunnage was to facilitate the taking in of the very cargo upon which the libellant was employed at the time he was hurt. Still further, the dunnage and plank that, by reason of neglect in the manner of stowing, fell upon the libellant, were part of the apparel and furniture of the ship.

"*In legal effect the blows inflicted upon the libellant were blows of the ship, and for blows given by the ship she was always been held liable* * * *." (Italics ours.)

It may be stated, therefore, that the stevedore, under the general maritime law, possesses the same lien against the ship itself as though he were a member of the crew in the protection of his wages and of his rights for personal injuries. Nor does the analogy between the stevedore and the member of the crew stop at that point. Further evidence of the judicial trend to extend all possible maritime benefits to the stevedores is evidenced in the case of *McCahan Sugar Refining Co.* v. *Stoffel*, 41 Fed. (2d) 651 (C. C. A. 3) where the stevedore's contract was judged by the same rules which are applicable to members of the crew. In that case, a longshoreman signed an agreement to be bound by a State Compensation Act, and in the same agreement, he released his employer from all liability under the maritime law. The legality of the document was challenged in the Court of Appeals, and, in declaring the release invalid, it was held that the stevedore was entitled to the same rules of construction which are applicable to any seaman's contract. Said the Court:

"There is no question that seamen, though favored by the law and regarded as wards in admiralty, are

capable of making release for maritime injuries, yet in making such releases their rights are tenderly guarded and their acts, when waiving or yielding their rights, are carefully scrutinized."

. . . . . .

"The law regards a longshoreman or stevedore, injured while engaged in maritime service aboard a ship lying in navigable waters, as a seaman with all his peculiar rights and immunities." (Italics ours.)

The attention of the Court is directed to the fact that in each of the foregoing instances the stevedore's rights arose, and he was classified as a seaman under the general maritime law, independent of any statutes. The first relevant legislation occurred in the form of the Jones Act (Mar. 4, 1915, c. 153, sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, sec. 33, 41 Stat. 1007—46 U. S. C. A. 688), which incorporated into the maritime law the Federal Employers' Liability Act for the benefit of seamen generally. The right of stevedores to share in the benefits of that act as seamen was challenged shortly after its passage in the case of *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, 71 L. Ed. 157. The Court there followed the same consistent trend which characterizes the longshoremen whenever possible as "seamen" in the protection of their earnings, their contracts and their rights for personal injuries. The Court makes it crystal clear that the fact of employment by a stevedoring contractor rather than by the vessel does not deprive the longshoremen of the protection which the maritime law affords to seamen generally. A brief excerpt from the opinion proves the point most forcefully as follows:

"It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered

by the ship's crew. Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 62, 58 L. Ed. 1208, 1212, 51 L. R. A. (N. S.) 1157, 34 Sup. Ct. Rep. 733. *We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case, they should be in the other.* In view of the broad field in which Congress has disapproved and changed the rule introduced into the common law within less than a century, *we are of opinion that a wider scope should be given to the words of the act, and that in this statute 'seamen' is to be taken to include stevedores employed in maritime work on navigable water, as the plaintiff was, whatever it might mean in laws of a different kind.*" (Italics ours.)

It has been suggested in petitioner's brief that the classification of stevedores as seamen under the Jones Act must be limited strictly to the Jones Act itself without reference to the general maritime law. That such a construction is wholly erroneous is clearly evidenced from the authorities heretofore set forth. Moreover, that contention overlooks the fact that the Jones Act was never intended to create a right standing by itself, but rather a right in its setting in the maritime law. In other words, it is the maritime law as modified by the Jones Act which prescribes the right. *Panama Railroad* v. *Johnson*, 264 U. S. 375. Petitioner's contention is clearly refuted in the case of *Jamison* v. *Encarnacion*, 281 U. S. 635, 74 L. Ed. 1082, where the Court said:

"Plaintiff was a seaman within the meaning of § 33 (International Stevedoring Co. v. Haverty, supra), and, as he sustained the injuries complained of while loading a vessel in navigable waters, *the case is gov-*

erned by the maritime law as modified by the acts of Congress above referred to." (Italics ours.)

A somewhat unique situation arose in the case of *Uravic v. Jarka Co.*, 282 U. S. 234, 75 L. Ed. 312, where a longshoreman was killed on a German ship, and it was contended that he could not be construed as a seaman inasmuch as the crew were foreign and the vessel flew a foreign flag. In rejecting this contention, the Court permitted the Administratrix the same remedies arising out of any American seaman's death, as follows:

> "Perhaps it would be a sufficient answer to the objections that while the § 33 is construed to give the rights of seamen to stevedores it does not say or mean that stevedores are to be regarded as seamen on the particular vessel upon which for the moment they happen to be at work. *They simply are given the rights of seamen and as they are American workmen they have the rights of American seamen as well on German as on American ships.*" (Italics ours.)

In summary, while the longshoremen may be distinguished from the members of the crew, there can be no doubt but that they have the rights of seamen, at least in connection with claims for indemnity for personal injury, and in the protection of their earnings and their contracts. The petitioner's contention that the stevedore's rights as a seaman must be limited only to his employer, under the Jones Act, is completely at variance with the settled authorities which characterize stevedores as seamen under the general maritime law, and particularly, with those which show that the stevedore's rights extend even against the ship itself in rem.

The Warranty of Seaworthiness Extends to Longshoremen

In general, the duty of a shipowner to provide a seaworthy vessel is an absolute one and is defined in *The Niagara*, 62 U. S. 7, 16 L. Ed. 41, as follows:

> "A carrier's first duty, and one that is implied by law, when he is engaged in transporting goods by water, is to provide a seaworthy vessel, tight and staunch, and well furnished with suitable tackle, sails, or motive power, as the case may be, and furniture necessary for the voyage."

In *The Turret Crown*, 297 Fed. 766, cert. den., 264 U. S. 591, the Court held:

> "Ordinarily a shipowner warrants that his ship is seaworthy in all respects, and not merely that he has used due diligence to make her seaworthy. Of course, the parties may stipulate to the contrary. The warranty is absolute that the ship is, or in fact shall be seaworthy at the time of engagement, and does not depend on the owner's knowledge or ignorance or his care or negligence. The Edwin I. Morrison, 153 U. S. 199, 14 Sup. Ct. 823, 38 L. Ed. 688."

The warranty of seaworthiness applies not only for the protection of the cargo, but extends also to the benefit of the seamen whose services are necessary in connection with the transportation and operation of the vessel. In *the "H. M. Scandrett"*, 87 F. 2d 708, the suit was by a member of the crew who claimed damages because of an unseaworthy device. In holding the vessel liable, the Court said:

> "This is not an action under the Jones Act (41 Stat. 988) founded on negligence. The libellant is invoking a remedy based on unseaworthiness or defective condition of the vessel or her equipment. In such a case the liability for any injuries arising out of the neglect

to supply a seaworthy vessel is not dependent on the exercise of reasonable care but is absolute."

In this connection, it is significant to note that there has been considerable confusion in defining the basis of a shipowner's liability for an unseaworthy condition, even with respect to a member of the crew. In *the "Osceola"*, 189 U. S. 158, 47 L. Ed. 760, the Court, in reviewing the early authorities, pointed out that while a large number of the decisions predicated the liability on negligence, the Courts were really talking about unseaworthiness. The uncertainty of the rule as it applied to members of the crew was considered in *the "Seandrett"*, *supra*, as follows:

> "It is true that in some suits brought to recover damages for injuries arising out of an unseaworthy vessel the cause of action has been treated as based on negligence. Such was the case of Burton v. Greig, 271 F. 271, 272, decided by the Circuit Court of Appeals, of the Fifth Circuit." But in Sabine Towing Co. v. Brennan (C. C. A.) 72 F. (2d) 490, 494, certiorari denied 293 U. S. 611, 55 S. Ct. 141, 79 L. Ed. 701, Judge Hutcheson, writing for the majority, said that there is a duty of shipowners to their seamen to see that the ship is seaworthy and her equipment in safe condition for use when she starts on her voyage and that such duty *'as to injuries, for which the general maritime law provides recovery, is absolute.'"* (Italics ours.)

In concluding, the Court, in *the "Seandrett"*, laid down the rule of the maritime law governing injuries to seamen as follows:

> "In our opinion the libellant had a right of indemnity for injuries arising from an unseaworthy ship even though there was no means of anticipating trouble.
>
> "The ship is not freed from liability by mere due diligence to render her seaworthy as may be the case under the Harter Act (46 U. S. C. A. §§ 190-195) where loss results from faults in navigation, *but under the*

> *maritime law there is an absolute obligation to provide a seaworthy vessel and, in default thereof, liability follows for any injuries caused by breach of the obligation.*" (Italics ours.)

The most recent decision of this Court on the point was rendered in the case of *Mahnich* v. *Southern S. S. Co.*, 321 U. S. 96, 88 L. Ed. 561, where the suit was by a member of the crew and based on unseaworthiness. It was contended there that the negligence of the mate was an intervening act which insulated the owner from liability for the unseaworthy condition. The Court unequivocally denied that contention, and in connection with the general scope of the warranty of seaworthiness, said:

> "It required the Harter Act to relax the exacting obligation to cargo of the owner's warranty of seaworthiness of ship and tackle. *That relaxation has not been extended, either by statute or by decision, to the like obligation of the owner to the seaman.*" (Italics ours.)

An interesting situation arose in "*The Student*", 243 Fed. 807, cert. den. 245 U. S. 658, 62 L. Ed. 534, where a stevedore was killed by a defective shackle. The vessel was held liable notwithstanding the fact that the defect could not be seen. It will be seen from the language of the Court that the shipowner owed a duty to provide proper equipment in the sense that it must be seaworthy. An excerpt from the opinion shows:

> "Although this is hardly a case to which the doctrine of res ipsa loquitur applies, yet the fact that the pin did become loose gives support to the contention that it was not such a pin as the ship was bound to furnish * * * Taking everything into account, we are inclined to the conclusion * * * that the pin in question was shown to be defective and unfit * * * *and*

if this conclusion be accepted the liability of the ship follows under familiar principles of law."

" * * If it was in fact unsafe by reason of imperfection or unfitness which could not be seen after it was inserted in the shackle, the responsibility therefore rested upon the ship and not upon the contractor because the ship was bound to furnish tackle free from defects of that character."* (Italics ours.)

The principle of law which we advance here was adopted very early in our law in absolving a shipowner of liability in the case of *Malone v. Western Transportation Co.*, Fed. Case No. 8996. There the longshoreman was engaged by the shipowner to help stow cargo into the vessel and he was injured through the neglect of a member of the crew. No unseaworthy condition was shown. A demurrer to the action was sustained by the Court on the ground that the injury was due to the negligence of a fellow servant. In classifying the longshoreman in the same category as the members of the crew and in holding that the shipowner should only be liable for an unseaworthy condition, the Court said:

"If he provides a seaworthy ship, properly equipped, and commanded by competent officers, he has discharged his duty toward the subordinates. They must be deemed to have entered upon the service with the understanding that they take the chances of the neglect or carelessness of any or all others *who are engaged in the common employment and occupation of loading, unloading or running the boat.* Demurrer sustained." (Italics ours.)

A much more recent case, in which the same theory was followed in absolving the United States as a private operator, is the case of *Cassil v. United States Emergency Fleet Corp.*, 289 Fed. 774 (C. C. A. 9). In that case, the suit was also by a stevedore against the owner of the vessel

for personal injuries, and in stating the liability of the shipowner to the longshoreman, the Court said:

> "The appellant was engaged in rendering a maritime service when he received his injuries. *He could hold the Emergency Fleet Corporation responsible for damages only on the theory that the vessel was unseaworthy in respect to the instrument whereby his injuries were occasioned.*" (Italics ours.)

Thus, it is fair to state that the foregoing cases would hold a shipowner liable to a stevedore if the injuries had been caused by unseaworthiness. The conclusion follows that the warranty of seaworthiness extends to stevedores. A significant statement in this connection is found in *The Helios*, 12 Fed. 732, where the Court, in holding the vessel liable, made this very pertinent statement:

> "When the first mate told the stevedore the vessel was ready for him to proceed to stow the cargo, *that was a virtual warranty* against all such traps in the darker parts of the vessel, which could not be or would not be perceived in the ordinary course of stowage." (Italics ours.)

The consistent trend of judicial decision has been to afford longshoremen all of the benefits of seamen wherever possible to do so. Their wages have been protected by a lien against the ship, and for their personal injuries they have always been accorded a lien against the vessel itself, in the same manner as though they were members of the crew. Their contracts are governed by the same protective rules which are available to seamen generally. When the Supreme Court in the *Haverty* case held that longshoremen must be construed to be seamen under the Jones Act, the Court was not invoking a new or novel theory of law, but was merely following the trend which had been set in motion by the Courts themselves since the earliest times. By in-

cluding stevedores as seamen within the meaning of the Jones Act, the Congress was merely supplementing the stevedore's rights under the general maritime law. The Court, in the *Haverty* case, went to the very heart of the question when it held that the protection to men engaged upon the same maritime duties should not be varied because of the accident of their being employed by a stevedore rather than by the ship. The *Haverty* case leaves no room for doubt but that whatever the term "seamen" may mean in other matters, insofar as personal injuries are concerned, and particularly with respect to the right of indemnity for those personal injuries, there is no reason to deprive a longshoreman of the same rights accorded to a member of the crew. As the Court of Appeals pointed out below, the stevedore is working in marine employment and is subject to all the risks for the time being. The fact that the exigencies of modern commerce have called in additional help for loading and unloading does not make the undertaking any less a marine transaction and rightly subject to the rules of law for the protection of workers who take the risks of such transactions.

We respectfully submit that the shipowner owes the same duty to a stevedore, to provide seaworthy appliances, as he does to the members of the crew.

The General Rules of the Maritime Law Apply Whether the Proceeding Be Instituted in an Admiralty or Common Law Court.

Petitioner contends very strenuously that the warranty of seaworthiness is an admiralty doctrine and has no application in an action on the civil side of the Court. This contention was raised for the first time in the Court of Appeals below on petition for re-hearing after the opinion was rendered by that Court. A brief review of the authorities

discloses beyond any doubt the lack of any merit in this contention. To begin with, the petitioner confuses a litigant's rights with the remedies available to him for the enforcement of those rights. In *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372, 62 L. Ed. 1171, the Court distinguished between rights and remedies as follows:

> "The distinction between rights and remedies is fundamental. A right is a well-founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. Bouvier's Law Dict. Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law."

In passing on the very contention which has been here raised by the petitioner, the Court in the *Chelentis* case said:

> "The contract of a seaman is maritime and has written into it those peculiar features of the maritime law that were considered in the case of The Osceola, 189 U. S. 158, 47 L. ed, 760, 23 Sup. Ct. Rep. 483; and although, because of these peculiarities, such contracts are almost invariably litigated in admiralty courts, still the contract must be the same in every court, maritime or common law. The only difference between a proceeding in one court or the other would be that the remedy would be regulated by the lex fori."

The question was most recently undertaken by this Court in the case of *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 87 L. Ed. 239, in which case the same counsel for petitioner here raised the same contention there. Petitioner suggests now that the *Garrett* case is not controlling because it involves only a Federal Statute and not a right arising out of the general maritime law. We submit that even if that suggestion be correct, it would not alter the basic principles involved, but we cannot leave unchallenged the petitioner's premise since the argument in the *Garrett*

case involved not just a question of the applicability of the Jones Act, but rather the maritime rule of law which provides that the burden of proof is on the shipowner and not on the seaman, in testing the validity of a seaman's release. Moreover, the *Garrett* case involved a verdict for maintenance and cure; entirely aside of the verdict for damages. There is no other right which is more deeply rooted in the admiralty law than the right to maintenance and cure. It is quite evident, therefore, that the *Garrett* decision involves not only a Federal Statute, but also the most basic rights arising under the maritime law. An excerpt from the opinion in that case eliminates the necessity for further argument on the point as follows:

> "It must be remembered that the state courts have concurrent jurisdiction with the federal courts to try actions either under the Merchant Marine Act or in personam such as maintenance and cure. The source of the governing law applied is in the national, not the state, governments. If by its practice the state court were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would actually deny, federal rights which Congress, by providing alternative remedies, intended to make not less, but more secure. The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself originates. Not so long ago we sought to achieve this result with respect to enforcement in the federal courts of rights created or governed by state law. And admiralty courts, when invoked to protect rights rooted in state law, endeavor to determine the issues in accordance with the substantive law of the State. So here, in trying this case *the state court was bound to proceed in such manner that all the substantial rights of the parties under controlling federal law would be protected.*". (Italics ours.)

In *Carlisle Packing Co.* v. *Sandanger*, 259 U. S. 255, 66 L. Ed. 927, the cause of action was based on unseaworthiness and the suit brought in a common law Court. In holding that the admiralty rules prevailed, the Court said:

> "The general rules of the maritime law apply whether the proceeding be instituted in an admiralty or common-law court. Chelentis v. Luckenbach S. S. Co. supra; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 159, 64 L. ed. 834, 838, 11 A. L. R. 1145, 40 Sup. Ct. Rep. 438."

We submit that it would be laboring the point to further argue the unsoundness of petitioner's contention in this respect. It is clear and settled that the substantive rights of the parties must be the same irrespective of the forum which they choose to litigate their differences. That the right to indemnity for unseaworthiness is a substantive right needs no argument.

Petitioner argues that, if the decision of the Court below be sustained, then the stevedores will have greater rights than the members of the crew because the latter cannot have the advantage of the warranty of seaworthiness on the civil side of the Court, but only in the admiralty. The utter unsoundness of this position is illustrated in the *Garrett* and other cases just cited.

Elsewhere in the petitioner's brief, it is urged that petitioner is really secondarily liable to the Bethlehem Companies. Whatever the merit in this contention may be it has no place in this argument inasmuch as it could not affect respondent's rights. That argument could, of course, be made in the Court below in the event the judgment is affirmed, and after the case is remanded.

One further argument has been advanced which requires some comment. It is suggested that there is an analogy between the problem involved here and the distinction which

has been recognized between stevedores and members of the crew in the Longshoremen's and Harborworkers' Compensation Act. We respectfully submit that if there be any analogy to be drawn from these circumstances it must be drawn in favor of respondent's contention here. The Longshoremen's and Harborworkers' Compensation Act recognizes that longshoremen and stevedores have been classified and considered as "seamen" generally and in excluding the members of the crew from the provisions of that Act, Congress specifically used the term "members of the crew", and not "seamen". It will be recalled that when Congress first drafted the Longshoremen's Act it included stevedores as well as members of the crew within the provisions of the Act and characterized them all as seamen. It was only because the members of the crew expressly asked to be excluded that Congress removed them from the provisions of the Act. *Warner* v. *Goltra*, 293 U. S. 155, 79 L. Ed. 254.

Conclusion

At the time of the accident involved in the case at bar, the respondent was engaged in performing a service of direct benefit to the vessel and one which formerly had been performed by a member of the crew. We think it would be unreasonable and contrary to the consistent trend of judicial authority to hold a vessel and her owner to a lesser degree of responsibility for the safety of the respondent as a stevedore than if he had been a member of the crew. Conceivably, a member of the crew may have been standing beside him, either supervising or assisting in the operation generally, and if as a result of the defective shackle the falling boom struck both the respondent and the member of the crew, we think it would be against all reason and logic to allow a recovery for the injuries of one and not the other. We submit that whatever the term "seamen" may be

construed to cover in other respects, at least in connection with the injuries which may be caused to stevedores by reason of unseaworthy appliances, a stevedore must be considered as a seaman and entitled to the protection of the warranty of seaworthiness.

Wherefore we respectfully submit that the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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